IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Christopher Laccinole, Petitioner, vs. Wells Fargo Financial Rhode Island Inc., Respondent.	)))))))))))	Civil Action No. 1:16-0001

WELLS FARGO FINANCIAL RHODE ISLAND INC.'S MOTION TO STRIKE PETITIONER CHRISTOPHER LACCINOLE'S OBJECTION TO WELLS FARGO'S ANSWER TO LACCINOLE'S PETITION TO COMPEL ARBITRATION

Wells Fargo Financial Rhode Island Inc. ("Wells Fargo") pursuant to Fed. R. Civ. P. 12(f), respectfully moves to strike Petitioner Christopher Laccinole's ("Laccinole") Objection and Motion to Enter Order ("Objection") (ECF No. 7), which Laccinole filed in response to Wells Fargo's Answer to Laccinole's Petition to Compel Arbitration (ECF No. 6). Pursuant to Rule 12(f), the Court may strike from a pleading "an insufficient defense or any redundant [or] immaterial . . . matter." Rule 12(f) is "designed to reinforce the requirement in Rule 8(e) that pleadings be simple, concise, and direct." *Fundi v. Citizens Bank of Rhode Island*, No. CA 07-078 ML, 2007 WL 2407106, at *3 (D.R.I. Aug. 22, 2007) (internal citation omitted). A pleading that violates the principles of Rule 8 may be struck "within the sound discretion of the court." *Id.* (quoting *Newman v. Massachusetts*, 115 F.R.D. 341, 343 (D.Mass.1987)).

While motions to strike are rarely granted absent a showing of prejudice to the moving party, Wells Fargo is and continues to be prejudiced by Laccinole's protracted and frivolous litigation in this Court. The Objection should be stricken in its entirety.

PROCEDURAL HISTORY

Laccinole and Wells Fargo agreed to arbitrate their disputes pursuant to an Arbitration Agreement dated February 15, 2008. A copy of the Arbitration Agreement is attached to hereto as **Exhibit A**. On February 27, 2015, Laccinole filed an action with the American Arbitration Association, which is currently pending as Case No. 15-0002-7683 ("AAA Arbitration"). In his AAA Arbitration Complaint, Laccinole alleges Wells Fargo improperly reported information to three credit bureaus. In April, 2015 Wells Fargo appeared in the AAA Arbitration and paid the $3,000 administrative fee and arbitrator compensation. In September, 2015, Laccinole demanded that a retired federal district court judge be appointed as arbitrator.

On August 5, 2015, Laccinole filed his *first* small claims action against Wells Fargo, seeking reimbursement of $75 for the initial filing he fee paid pursuant to Paragraph 5 of the Arbitration Agreement. *Christopher Laccinole v. Wells Fargo Financial RI*, Case No. 4SC-2015-00210. Wells Fargo filed a motion to dismiss it for lack of subject matter jurisdiction. On September 21, 2015, the small claims court dismissed Plaintiff's first small claims action. Nevertheless, Wells Fargo still reimbursed Laccinole the $75.

On October 7, 2015, AAA notified Laccinole by email that it was "unable to meet the requirements set forth in the parties contract of and your request for a federal judge to be appointed in this matter." *See* email attached as **Exhibit B**. AAA assured Laccinole that it had "a panel of highly qualified arbitrator [sic], who although do not have federal judges experience, do nonetheless have extensive experience in these types of matters." *Id.* AAA requested that Laccinole advise it by October 14, 2015, whether he was willing to waive the requirement. *Id.*

Thereafter, Laccinole advised Wells Fargo that he was unwilling to waive his right under the contract to have a retired federal judge serve as an arbitrator, and stated that he wished to pursue the arbitration in JAMS, which has several retired federal judges available for consumer arbitrations. *See* letter attached hereto as **Exhibit C**. Wells Fargo immediately began the process of investigating the viability of JAMS as an alternative forum, as well as seeking reimbursement of its $3000 filing fee from AAA.

In November, 2015, Laccinole demanded that Wells Fargo reimburse him for the $125 balance of his $200 AAA filing fee. To avoid further litigation, Wells Fargo agreed to pay Laccinole the $125 filing fee, but Laccinole refused to sign a W-9, a necessary prerequisite under federal law for Wells Fargo to issue the payment. On December 10, 2015, Laccinole commenced a *second* small claims action against Wells Fargo to recover the $125 AAA filing fee. *Christopher Laccinole v. Wells Fargo Financial Rhode Island, Inc.*, Case No. 4SC-2015-00287. Wells Fargo moved to dismiss for lack of subject matter jurisdiction, and a hearing is scheduled for April 25, 2016.

On January 4, 2016, Laccinole filed his Complaint to Enforce Arbitration (ECF No. 1). He filed premature Motions for a Hearing, which were denied by the Court (ECF Nos. 2, 3). On January 11, 2016, AAA advised the parties by email that it had appointed Judge Frank J. Williams as arbitrator, and proposed dates in early February for a telephonic preliminary hearing. On January 15, 2016, Laccinole replied to the AAA email and indicated that he was "not available for any of the proposed dates (February 1, 2, 4, 5)." *See* email attached hereto as **Exhibit D**. On January 20, 2016, AAA proposed additional dates for an initial telephonic conference with Judge Williams. On January 21, 2016, Laccinole replied to AAA and stated that he "object[s] to the appointment of Frank Williams as arbitrator in this case," and "move[s] to stay arbitration in this matter pending Judge McConnell's decision in the federal court." *See* email attached hereto as **Exhibit E.**

On January 25, 2016, AAA emailed the parties and "acknowledge[d] receipt of [Laccinole's] objection to the continued service of Arbitrator Williams and [his] request for a stay of this matter pending a decision of a federal court order," and requested that Wells Fargo "provide comments" no later than February 1, 2016. *See* email attached hereto as **Exhibit F.**

On January 26, 2016, after confirming that JAMS has retired federal judges available, Wells Fargo notified Laccinole by email that it consents to arbitrating his dispute with JAMS (instead of AAA). *See* email attached hereto as **Exhibit G**. The same day, Wells Fargo filed its Answer to Laccinole's Petition to Compel Arbitration (ECF No. 6). In its Answer, Wells Fargo stated that Laccinole's Petition was moot and barred by lack of subject matter jurisdiction given Wells Fargo's agreement to arbitrate the dispute with JAMS. (ECF No. 6 at Introductory Statement and First Affirmative Defense). The same day, Wells Fargo replied to AAA and stated that "[i]f the matter were to remain in AAA, Wells Fargo accepts the appointment of Arbitrator Williams . . . [h]owever, at Mr. Laccinole's request, Wells Fargo has recently agreed to arbitrate the dispute in JAMS." *See* email attached hereto as **Exhibit H.**

On January 29, 2016, Laccinole filed his Objection and Motion to Enter Order ("Objection") (ECF No. 7), which is the subject of this Motion to Strike. In his Objection, Laccinole states that Wells Fargo's "belated agreement to arbitrate in JAMS (ECF 6) does not moot the instant petition because of the language in 9 U.S.C. § 4," and further that "9 U.S.C. § 4 expressly mandates that this Court make such an order." Laccinole further states that his "request for a Court order is not a trivial, perfunctory rubric," and in fact he has "spoken with JAMS regarding this matter and absent a Court Order, JAMS will not accept an arbitration listing another forum." Laccinole claims that without such a court order, he will be "unable to initiate arbitration in JAMS given the contract language."

On February 4, 2016, the Court entered an order referring the case to mediation with Berry Mitchell. (ECF No. 8). Pursuant to the Court's order, "all parties . . . shall attend the mediation in person;" thus, Wells Fargo is required to bring a corporate representative from out of state to attend the proceeding, which has yet to be scheduled.

On February 10, 2016, Laccinole filed a "Motion for Stay of Proceedings and to Compel Arbitration." (ECF No. 9). Wells Fargo will file its objection to that Motion separately.

Finally, on February 19, 2016, Wells Fargo notified Laccinole that JAMS will provide a retired federal district court judge and does not require a Court order to arbitrate, only the consent of the parties and payment of the fees, both of which Wells Fargo has agreed to provide. *See* email attached hereto as **Exhibit I.**

ARGUMENT

This Court has already found that Laccinole, in the course of his many unsuccessful lawsuits, has a "tendency to shift position as the wind changes" and make "disingenuous assertions." *Laccinole v. Twin Oaks Software Development, Inc.*, CA No. 13-716M, 2014 WL 2440400, at Footnotes 5, 8, and 15 (D.R.I. May 30, 2014). Wells Fargo has agreed in writing to arbitrate the dispute with JAMS, and Laccinole's frivolous request for a court order where none is required should be stricken as procedurally improper, or denied as substantively deficient.

First, his Objection should be stricken because it is procedurally improper. There is no provision in the Federal Rules of Civil Procedure allowing for a Plaintiff to "object" to a Defendant's Answer. The only procedural vehicle of which Wells Fargo is aware should Laccinole wish to challenge the substance of Wells Fargo's Answer is by way of a motion to strike, which he has not done. The Objection should be stricken for that reason alone.

Second, Laccinole's assertion that 9 U.S.C. § 4 "expressly mandates" that the Court order the parties to arbitrate before JAMS is plainly insufficient. The statutory language Laccinole quotes specifically states that "upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement." Here, Laccinole is asking for the Court to order something that is *not* in accordance with the plain terms of the agreement: arbitration with JAMS, instead of AAA. Laccinole seeks reformation, not enforcement. Wells Fargo has already consented to arbitration with JAMS. There is no legal requirement that the Court issue an order.

Third, Wells Fargo has communicated with JAMS, and there is also no practical requirement that this Court issue an order to arbitrate in JAMS where the parties have agreed in writing to do so, and paid the necessary fees. *See* email from JAMS attached as **Exhibit J.** Thus, Laccinole's assertion that absent a court order, he will be "unable to initiate arbitration in JAMS given the contract language" is an "insufficient defense" and "redundant," and should be stricken. *See* Fed. R. Civ. P. 12(f).

Finally, by email dated February 16, 2016, Wells Fargo asked AAA whether it could provide a retired federal judge from a neighboring state (perhaps MA or CT) who would travel to Rhode Island to arbitrate this matter. AAA responded and indicated that it would "conduct a search of retired federal judges in the New England area, and follow up with the parties accordingly." *See* email attached as **Exhibit K**. If this is an option, Wells Fargo would be willing to pay for the arbitrator's time to travel to Rhode Island, to honor Laccinole's demand that a retired federal judge hear his case.

In sum, from the inception of this matter, Wells Fargo has done everything possible to accommodate Laccinole's (many) demands and to provide him with a convenient forum in which to adjudicate his consumer dispute. In the instant action, it has already agreed to arbitrate the dispute with JAMS, before a retired federal judge. There is no legal basis for Laccinole's insistence to continue this litigation, and there is no subject matter jurisdiction for this Court's continued consideration of it, including the Court-ordered mediation with Mr. Mitchell. As this Court found in Laccinole's prior litigation, "[i]n the end, this is a case with much smoke, but no fire." *Twin Oaks*, 2014 WL 2440400, at *1.

Laccinole's Objection should be stricken in its entirety, and the matter dismissed.

Respectfully submitted,

Wells Fargo Financial Rhode Island Inc.,

By its Attorney,

/s/ *Lauren J. O'Connor*

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Dated: February 22, 2016

CERTIFICATE OF SERVICE

I, Lauren O'Connor, hereby certify that this document has been field electronically and is available for viewing and downloading from the ECF system. I further certify that this document will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on February 22, 2016.

/s/ *Lauren J. O'Connor*
Lauren J. O'Connor